

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG - 5 1994

In the Matter of)	
)	
Preparation for International)	
Telecommunication Union World)	IC Docket No. 94-31
Radiocommunication Conferences)	

REPLY COMMENTS OF PRIMOSPHERE LIMITED PARTNERSHIP

Primosphere Limited Partnership (Primosphere), by its attorneys, hereby submits its reply comments in response to the Commission's Notice of Inquiry (Notice) in preparation for the 1995 World Radiocommunication Conference ("WRC-95").¹ Primosphere is an applicant to construct, launch and operate two satellites for provision of satellite digital audio radio service, in the 2310-2360 MHz band.²

I. Background and Recommended United States Proposal

Primosphere believes it is essential that the United States clarify, within its domestic proceeding proposing the allocation of spectrum for SDARS,³ or at WRC-95, that the entire 2310-2360 MHz band is available for use for Broadcasting Satellite Service(Sound) (BSS(Sound)), in the United States, without the need for an international planning conference to address the use of the lower 25 MHz of the band.

¹ In the Matter of Preparation for International Telecommunication Union World Radiocommunication Conferences, IC Docket No. 94-31, FCC 94-96, released May 5, 1994.

² Application File Nos. 28-DSS-LA-93, 12/113-DSS-P-93.

³ See GEN Docket No. 90-357, 7 FCC Rcd 7776 (1992), proposing allocation of the 2310-2360 MHz band for a satellite digital audio radio service in the United States.

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Primosphere agrees with the comments of the American Mobile Satellite Corporation (AMSC) in this proceeding. AMSC, the parent corporation of the American Mobile Radio Corporation, also an applicant for provision of SDARS, requests the Commission to clarify that Resolution 528 (WARC-92) does not apply to the 2310-2360 MHz band.⁴

AMSC's comments are consistent with those of Primosphere in the Commission's Notice of Inquiry in the matter of United States preparation for International Telecommunication Union World Radiocommunication Conferences.⁵ Primosphere previously proposed that the Commission clarify this matter.⁶ The Commission has not yet addressed Primosphere's proposal, nor did it issue a Report and Order in the proceeding in preparation for WRC-93.

Because the question of applicability of Resolution 528 to the 2310-2360 MHz band remains unresolved, Primosphere believes that the Commission should develop a United States recommendation to WRC-95 to modify RR 750B as follows:

MOD **750B** Additional allocation: in the United States of America and India, the band 2310-2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial sound broadcasting service on a primary basis. Such use is limited to digital audio broadcasting ~~and is subject to the provisions of Resolution 528 (WARC-92).~~

This subject may be addressed at WRC-95 pursuant to Agenda Item 1. which permits WRC-95 to:

review the final report of the VGE, and to consider related proposals from administrations, in order to undertake, as appropriate, a revision of the Radio Regulations and to provide a timetable for the implementation of outstanding recommended actions.⁷

⁴ AMSC Comments, pp. 19-20.

⁵ See Notice of Inquiry, ET Docket No. 93-198, 8 FCC Rcd 4512 (1993).

⁶ See Comments of Primosphere Limited Partnership, filed July 19, 1993.

⁷ Final Acts of the World Radiocommunication Conference, Geneva, 1993.

The Commission, in its WRC-95 Notice of Inquiry (WRC-95 Notice), points out that the Report of the Voluntary Group of Experts (VGE) encourages "periodic review by administrations and the Radiocommunication Bureau to identify those country-specific footnotes to the Allocations Table that are no longer needed and may be deleted."⁸ Because of the inapplicability of Resolution 528 to the BSS(Sound) allocation in the 2310-2360 MHz band, it is appropriate for the United States to recommend revision of Footnote 750B. In ET Docket No. 93-198, in preparation for WRC-93, the Commission sought comments on the subject of the applicability of Resolution No. 528 (RES528) to the 2310-2360 MHz band. Resolution No. 528, adopted at the 1992 World Administrative Radio Conference,⁹ calls for a conference before 1998 to address the planning of BSS (Sound), to develop procedures for coordination of complementary terrestrial broadcasting, and to review necessary criteria for sharing with other services.¹⁰

The Commission, in its Notice in ET Docket No. 93-198 (WRC-93 Notice), stated the preliminary view that international planning for BSS (Sound) in the 2310-2360 MHz band "does not appear to be necessary, since the U.S. allocation is common only to the United States and India."¹¹ The Commission requested comments on any issues that should be addressed at future international conferences, such as whether Resolution No. 528 restricts BSS (Sound) systems in the 2310-2360 MHz band to the upper 25 MHz of the bands until a planning conference is completed.

In response to the WRC-93 Notice, Primosphere urged the Commission to adopt the position that the matter of international spectrum allocations for BSS(Sound) not be reopened and that the full 50 MHz in the 2310-2360 MHz band be made available

⁸ WRC-95 Notice, para. 9.

⁹ See Final Acts of the 1992 World Administrative Radio Conference and Addendum & Corrigendum, Malaga-Torremolinos, 1992 ("Final Acts").

¹⁰ WRC-93 Notice, para. 9.

¹¹ Supra, para. 10.

for use by U.S. systems.¹²

Primosphere, along with other applicants for satellite digital audio radio service, have developed technical proposals, business plans, and strategies based on the use of the entire 2310-2360 MHz band.¹³ The Commission must clarify that the entire band is immediately available for use in the United States. As Primosphere stated in its comments in response to the WRC-93 Notice, "the Commission should proceed expeditiously to allocate the 2310-2360 MHz band for satellite DARS and complementary terrestrial service in the United States."¹⁴

II. The United States Should Take the Position that a Planning Conference for the 2310-2360 MHz Band is Not Required

At WARC-92, Resolution 528 was adopted regarding use of the allocated spectrum as well as the two other bands allocated for BSS(Sound). The main purpose of the resolution was to address concerns of administrations using the 1.5 GHz and 2.6 GHz allocations. Resolution 528 calls for a conference to plan the use of the BSS(Sound) service. The Resolution also suggests that administrations implement only the upper 25 MHz of their allocations prior to a planning conference.

Primosphere has already stated its view that a planning conference is not necessary for BSS(Sound) in the 2310-2360 MHz band.¹⁵ Such a planning conference is directed at insuring that all administrations which may want to deploy satellite sound broadcasting systems operating in the 1.5 GHz and 2.6 GHz bands will be assured of orbital locations in the geostationary-satellite arc from which to provide such service. This factor is not applicable to the 2310-2360 MHz allocation.

¹² Primosphere WRC-93 Comments, pp. 4-6.

¹³ In addition to Primosphere, Satellite CD Radio, Inc., Digital Satellite Broadcasting Corporation and American Mobile Radio Corporation are applicants for use of the 2310-2360 MHz band for satellite digital audio radio systems.

¹⁴ Primosphere Comments, p. 4.

¹⁵ Primosphere Comments, p. 5.

As a policy matter, the United States consistently has taken the view that conferences which plan the use of geostationary satellite orbits are not likely to result in the optimum use of the spectrum/orbit resource or promote the rapid introduction of systems. In discussing the United States perspective on the development of a priori plans in the 6/4 GHz and 13/11 GHz bands for use by the fixed-satellite service, it is noted that "planning, if not carefully limited, could inhibit technological progress by forcing technology to meet artificial and unnecessary constraints...." ¹⁶ The United States, in preparing for conferences for the planning of space services, has taken a similar view.¹⁷

In addition, Primosphere believes that the United States should decide, as a domestic matter, to make available the full band for the first generation BSS(Sound) systems.¹⁸ There is no valid rationale for deferring the use of a portion of the allocation until after a planning conference. The full band is needed to provide a service which has the audio quality and quantity of channels required in the public interest and to support multiple entry.

III. Coordination Issues Should be Addressed Bilaterally

Coordination issues with regard to the 2310-2360 MHz band will be handled on a bilateral basis, as systems are implemented. Matters which can be addressed bilaterally need not, and should not, be the subject of international conferences. Any

¹⁶ White and White, The Law and Regulation of International Space Communication, Artech House, 1998, at p. 203.

¹⁷ See United States of America Proposals to the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It, Geneva, 1988, as contained in Second Report and Order, FCC 88-124, March 30, 1988, at p. 2 of Proposals, which states: "Our experience in the development and implementation of satellite systems has demonstrated that flexibility is needed both to encourage technical advancements in satellite systems and to ensure efficient use of a limited resource."

¹⁸ Id.

necessary coordination of United States systems with other communications services operating in the band can be accomplished on the basis of bilateral coordination, pursuant to Resolution 33.¹⁹

IV. Conclusion

The United States should move forward expeditiously to implement the 2310-2360 MHz band for satellite digital audio radio service. Four applicants are prepared to proceed with implementation of systems in this band which will deliver new communications services to the American public and provide economic stimulus to the United States economy. The Commission has two options: it can determine, as a domestic matter, not to apply Resolution 528, or it can seek revision of Footnote 750B at WRC-95. In either case, the United States should take the position that neither a planning conference nor the limitation to the upper 25 MHz of the band prior to such a conference is applicable to the 2310-2360 MHz band. Any technical issues concerning use of this band which may impact the operations of services in other countries should be addressed bilaterally.

¹⁹ Resolution 528 provides "that in the interim period [prior to a planning conference], broadcasting-satellite systems may only be introduced within the upper 25 MHz of the appropriate band in accordance with Resolution **33 (WARC-79)**." Resolution **33** provides procedures for bringing into use broadcasting-satellite systems as well as procedures for "interim" systems which are brought into use prior to the implementation of broadcasting-satellite service plans.

Respectfully submitted,

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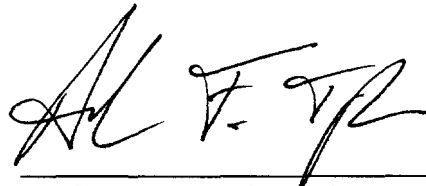
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